



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2013-0059; FRL-9809-2]

Approval and Promulgation of Air Quality Implementation Plans; State of Wyoming; Revised General Conformity Requirements and an Associated Revision.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing approval of a State Implementation Plan revision submitted by the State of Wyoming. On December 21, 2012, the Governor of Wyoming's designee submitted to EPA revisions to Wyoming's Air Quality Standards and Regulations Chapter 8, Nonattainment Area Regulations, involving Section 3 of Chapter 8 that addresses general conformity requirements and a new Section 5 to Chapter 8 that involves incorporation by reference. The SIP submission addresses revisions and additions to the State's general conformity requirements in order to align them with the current federal general conformity regulation requirements and incorporates by reference those sections of the Code of Federal Regulations that are referred to in the State's general conformity requirements. EPA is proposing approval of the submission in accordance with the requirements of section 110 of the Clean Air Act.

DATES: Comments must be received on or before **[insert date 30 days from the date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R08-OAR-2013-0059, by one of the following methods:

- <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- E-mail: russ.tim@epa.gov
- Fax: (303) 312-6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- Mail: Carl Daly, Director, Air Program, EPA, Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129.
- Hand Delivery: Carl Daly, Director, Air Program, EPA, Region 8, Mailcode 8P-AR, 1595 Wynkoop, Denver, Colorado 80202-1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R08-OAR-2013-0059.

EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> website is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any

disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I, General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly-available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Program, EPA, Region 8, Mailcode 8P-AR, 1595 Wynkoop, Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air Program, EPA, Region 8, Mailcode 8P-AR, 1595 Wynkoop, Denver, Colorado 80202-1129, (303) 312-6479, russ.tim@epa.gov.

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- (i) The words or initials Act or CAA mean or refer to the Clean Air Act, unless the context indicates otherwise.

- (ii) The words EPA, we, us or our mean or refer to the United States Environmental Protection Agency.
- (iii) The initials NAAQS mean national ambient air quality standard.
- (iv) The initials SIP mean or refer to State Implementation Plan.
- (v) The words Wyoming and State mean the State of Wyoming.

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I. General Information

1. *Submitting CBI.* Do not submit CBI to EPA through <http://www.regulations.gov> or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- a. Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).
- b. Follow directions - The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- d. Describe any assumptions and provide any technical information and/or data that you used.
- e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- f. Provide specific examples to illustrate your concerns, and suggest alternatives.
- g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- h. Make sure to submit your comments by the comment period deadline identified.

II. Background

The intent of the general conformity requirement is to prevent the air quality impacts of federal actions from causing or contributing to a violation of a National Ambient Air Quality Standard (NAAQS) or interfering with the purpose of a State Implementation Plan (SIP). Under the Clean Air Act (CAA) as amended in 1990, Congress recognized that actions taken by federal agencies could affect state and local agencies' abilities to attain and maintain the NAAQS. Section 176(c) of the CAA, as codified in Title 42 of the United States Code (42 U.S.C. 7506), requires federal agencies assure that their actions conform to the applicable SIP for attaining and

maintaining compliance with the NAAQS. General conformity is defined to apply to NAAQS established pursuant to section 109 of the CAA, including the NAAQS for carbon monoxide (CO), nitrogen dioxide (NO₂), ozone, particulate matter, and sulfur dioxide (SO₂). Because certain provisions of section 176(c) of the CAA apply only to highway and mass transit funding and approval actions, EPA published two sets of regulations to implement section 176(c) of the CAA—one set for transportation conformity and one set for general conformity. The federal general conformity regulations were published on November 30, 1993 (58 FR 63214) and codified in the Code of Federal Regulations (CFR) at 40 CFR 93 Subpart B.

On July 17, 2006, EPA revised the federal general conformity regulations via a final rule (71 FR 40420). EPA had promulgated a new NAAQS on July 18, 1997 (62 FR 38652) that established a separate NAAQS for fine particulate smaller than 2.5 micrometers in diameter (PM_{2.5}). The prior coarse particulate matter NAAQS promulgated in 1997 pertains to particulate matter under 10 micrometers in diameter (PM₁₀). EPA's July 17, 2006 revision to the federal general conformity regulations (71 FR 40420) added requirements for PM_{2.5} for the first time, including annual emission limits of PM_{2.5} above which covered federal actions in NAAQS nonattainment or maintenance areas would be subject to general conformity applicability.

On April 5, 2010, EPA revised the federal general conformity regulations to clarify the conformity process, authorize innovative and flexible compliance approaches, remove outdated or unnecessary requirements, reduce the paperwork burden, provide transition tools for implementing new standards, address issues raised by federal agencies affected by the rules, and provide a better explanation of conformity regulations and policies (see 75 FR 17254, April 5, 2010). EPA's April 2010 revisions simplified state SIP requirements for general conformity, eliminating duplicative general conformity provisions codified at 40 CFR part 93 Subpart B and

40 CFR part 51, Subpart W. Finally, the April 2010 revision updated federal general conformity regulations to reflect changes to governing laws passed by Congress since EPA's 1993 rule. The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) passed by Congress in 1995 contains a provision eliminating the CAA requirement for states to adopt general conformity SIPs. As a result of SAFETEA-LU, EPA's April 2010 rule eliminated the federal regulatory requirement for states to adopt and submit general conformity SIPs, instead making submission of a general conformity SIP a state option.

With respect to Wyoming's general conformity requirements, EPA originally approved Wyoming's "Conformity of general federal actions to state implementation plans" into Section 32 of Wyoming's Air Quality Standards Regulations (WAQSR) with our final rule of November 19, 1999 (64 FR 63206). This version of Wyoming's "Conformity of general federal actions to state implementation plans" requirements was developed by the State to address the federal general conformity requirements that were promulgated on November 30, 1993 (58 FR 63214). On July 28, 2004, we approved Wyoming's restructuring and renumbering SIP submittal which then located Wyoming's "Conformity of General Federal Actions to State Implementation Plans" into WAQSR Chapter 8, Section 3 (see 69 FR 44965).

III. What was the State's Process?

Section 110(a)(2) of the CAA requires that a state provide reasonable notice and public hearing before adopting a SIP revision and submitting it to us.

On October 5, 2012, the Environmental Quality Council of the Wyoming Department of Environmental Quality conducted a public hearing to consider the adoption of revisions and additions to the Wyoming Air Quality Standards and Regulations. The revisions affecting the SIP involved Chapter 8, "Nonattainment Area Regulations", Section 3, "Conformity of general

federal actions to state implementation plans”, and Section 5, “Incorporation by reference”.

After reviewing and responding to comments received before and during the public hearing, the Wyoming Environmental Quality Council approved the proposed revisions on October 5, 2012. The SIP revisions became State effective on December 19, 2012 and the Governor’s designee submitted the SIP revisions to EPA on December 21, 2012.

We have evaluated Wyoming’s SIP revision submittal and have determined that the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA. By a letter dated March 20, 2013, we advised the Governor’s designee that the SIP revision submittal was deemed to have met the minimum “completeness” criteria found in 40 CFR part 51, Appendix V.

IV. EPA’s Evaluation of the State’s Revisions to Chapter 8, Sections 3 and 5

On December 21, 2012, the State of Wyoming submitted revisions to its SIP. The SIP revision consisted of changes and additions to Wyoming’s WAQSR Chapter 8, Section 3, “Conformity of general Federal actions to state implementation plans”, and a new Section 5, “Incorporation by reference”. The purpose of Wyoming’s SIP revision was to update its general conformity requirements to address and align the State’s requirements with the federal general conformity requirements promulgated on July 17, 2006 (71 FR 40420) and on April 5, 2010 (75 FR 17254), as described above. The revisions to Wyoming’s general conformity regulation, adopted on October 5, 2012 and State effective on December 19, 2012, are described below and make numerous changes to the prior, EPA-approved version of Wyoming’s general conformity requirements (State effective October 29, 1999 and EPA effective on January 18, 2000). In addition, Wyoming added a new Section 5 which incorporates by reference certain areas of the Code of Federal Regulations.

a. Revisions to WAQSR Chapter 8, Section 3

1. Section 3, (a) “Prohibition” was modified to remove obsolete provisions in (a)(iii) and now makes this section reserved.
2. Section 3, (a) “Prohibition” was modified to define NEPA in (a)(iv) and to add a new section (v) that indicates if an action in one nonattainment or maintenance area would affect another nonattainment or maintenance area, both areas must be evaluated.
3. Section 3, (b) “Definitions” was modified to revise, add or delete the definitions for;
“Applicability analysis”, “Applicable implementation plan or applicable SIP”, “Areawide air quality modeling analysis”, “Cause or contribute to a new violation”, “Confidential business information (CBI)”, “Conformity determination”, “Conformity evaluation”, “Continuing program responsibility”, “Continuous program to implement”, “Direct emissions”, “Emission inventory”, “Emissions offsets”, “Emissions that a Federal agency has a continuing program responsibility for”, “EPA”, “Federal agency”, “Indirect emissions”, “Local air quality modeling analysis”, “Maintenance area”, “Maintenance plan”, “Metropolitan Planning Organization (MPO)”, “Milestone”, “Mitigation measure”, “National ambient air quality standards (NAAQS)”, “Nonattainment area (NAA)”, “Precursors of a criteria pollutant”, “Reasonably foreseeable emissions”, “Regionally significant action”, “Restricted information”, and “Take or start the Federal action”.
4. Section 3, (c) “Applicability” was revised as follows:
 - A. Section 3, (c)(ii) was modified to provide clarification of emissions to include “criteria” and “precursors”.

B. Section 3, (c)(ii)(A) was modified to update the language to state “Other ozone NAAs inside an ozone transport region” and emissions thresholds were added for PM_{2.5} and its precursors.

C. Section 3, (c)(ii)(B) was modified to add emissions thresholds for PM_{2.5} and its precursors.

D. Section 3, (c)(iii) was modified by adding language to indicate the requirements of this section do not apply to certain Federal actions.

E. Section 3, (c)(iii)(B)(XXII) was added to address air traffic control activities.

F. Section 3, (c)(iv)(A) was modified to include the portion of an action that includes, in addition to major, minor new or modified stationary sources that require a permit under the New Source Review (NSR) program (Section 110(a)(2)(C) and section 173 of the CAA), and therefore, a conformity determination is not required for sources so permitted.

G. Section 3, (c)(iv)(B) was modified to remove specific examples of natural disasters and keep the provisions to address emergencies.

H. Section 3, (c)(v)(B)(I) adds language that a federal agency must provide a draft copy of the written determinations required to affected EPA Regional Office(s), the affected State(s) and/or air pollution control agencies, and any federally recognized Indian tribal government in the nonattainment or maintenance area. Those organizations must be allowed 15 days from the beginning of the extension period to comment on the draft determination.

I. Section 3, (c)(v)(B)(II) adds language that within 30 days after making the determination, federal agencies must publish a notice of the determination by placing a prominent advertisement in a daily newspaper of general circulation in the area affected by the action.

J. Section 3, (c)(v)(C) adds language that if additional actions are necessary in response to an emergency or disaster under this subsection beyond the specified time period in paragraph (v)B of this subsection, a federal agency can make a new written determination for as many 6-month periods as needed, but in no case does this exemption extend beyond three 6-month periods. An exception is where an agency provides information to EPA and the State stating that the conditions that gave rise to the emergency exemption continue to exist and how such conditions effectively prevent the agency from conducting a conformity evaluation.

K. Section 3, (c)(vi) adds language which states that actions specified by individual federal agencies as “presumed to conform” may not be used in combination with one another when the total direct and indirect emissions from the combination of actions would equal or exceed any of the rates specified in Section 3 paragraphs (c)(ii)(A) or (c)(ii)(B).

L. Section 3, (c)(vii) adds language that the federal agency must meet the criteria for establishing activities that are presumed to conform by fulfilling the requirements set forth in Section 3 paragraphs (c)(vii)(A), or (c)(vii)(B), or (c)(vii)(C).

M. Section 3, (c)(vii)(C) adds language that the federal agency must clearly demonstrate that the emissions from the type or category of actions and the amount of emissions from the action are included in the applicable SIP and the State, local, or tribal air quality agencies responsible for the SIP(s) provide written concurrence that the emissions from the actions along with all other expected emissions in the area will not exceed the emission budget in the SIP.

N. Section 3, (c)(viii) states that in addition to meeting the criteria for establishing exemptions as set forth in paragraphs (vii)(A) or (vii)(B) of the subsection, the new paragraph (vii)(C) is also included.

O. Section 3, (c)(viii)(A) adds language that the referenced Federal Register action must clearly identify the type and size of the action that would be “presumed to conform” and provide criteria for determining if the type and size of action qualifies it for the presumption.

P. Section 3, (c)(viii)(B) adds language that if the “presumed to conform” action has regional or national application (e.g., the action will cause emission increases in excess of the *de minimis* levels of this subsection) in more than one of EPA’s Regions, the federal agency, as an alternative to sending it to EPA Regional Offices, can send the draft conformity determination to EPA’s Office of Air Quality Planning and Standards.

Q. Section 3, (c)(ix) removed previous language and added language that emissions from actions are “presumed to conform” from: (1) installations with facility-wide emission budgets meeting the necessary requirements and that the State has included the emission budget in the EPA-approved SIP and the emissions from the action along with all other emissions from the installation will not exceed the facility-wide emission budget; (2) prescribed fires conducted in accordance with a smoke management program which meets the requirements of EPA’s Interim Air Quality Policy on Wildland and Prescribed Fires or an equivalent replacement EPA policy; or (3) emissions for actions that the State identifies in the EPA-approved SIP as “presumed to conform”.

R. Section 3, (c)(x) removed previous language and added language which states that even though an action would otherwise be “presumed to conform” under Section 3 paragraphs (vi) or (ix) of this subsection, an action shall not be “presumed to conform” and the requirements of 40 CFR 93.151, Subsection (a), Subsections (d) through (j) and Subsections (l) through (n) shall apply to the action if EPA or a third party shows that the action would: (1) cause or contribute to any new violation of any standard in any area; (2) interfere with provisions in the

applicable SIP for maintenance of any standard; (3) increase the frequency or severity of any existing violation of any standard in any area; or (4) delay timely attainment of any standard or any required interim emissions reductions or other milestones in any area including, where applicable, emission levels specified in the applicable SIP for purposes of a demonstration of reasonable further progress, a demonstration of attainment, or a maintenance plan.

S. Section 3, (c)(xi)(d) was modified to add language that the provisions of Section 3 shall apply except in the case of newly designated nonattainment areas where the requirements are not applicable until 1 year after the effective date of the final nonattainment designation for each NAAQS pollutant in accordance with section 176(c)(6) of the CAA.

T. Section 3, (c)(xi)(e) “Reporting requirements” was modified to add language that any federal agency must notify the appropriate EPA Regional Office(s), State and local air quality agencies, any federally-recognized Indian tribal government in the nonattainment or maintenance area. In addition, the added language stated that the draft and final conformity determination shall exclude any restricted information or confidential business information. The disclosure of restricted information and confidential business information shall be controlled by the applicable laws, regulations, security manuals, or executive orders concerning the use, access, and release of such materials. Subject to applicable procedures to protect restricted information from public disclosure, any information or materials excluded from the draft or final conformity determination or supporting materials may be made available in a restricted information annex to the determination for review by federal and state representatives who have received appropriate clearances to review the information.

U. Section 3, (c)(xi)(f)(ii), (iii), and (iv) under “public participation” was modified to add language that if the action has multi-regional or national impacts (e.g., the action will cause

emission increases in excess of the *de minimis* levels identified in Subsection (c)(ii) in three or more of EPA's Regions)), the federal agency, as an alternative to publishing separate notices, can publish a notice in the Federal Register.

V. Section 3, (c)(xi)(f)(v) under "public participation" was modified to add language that the draft and final conformity determination shall exclude any restricted information or confidential business information. This section also notes that the disclosure of restricted information and confidential business information shall be controlled by the applicable laws, regulations, or executive orders concerning the release of such materials.

W. Section 3, (c)(xi)(g) was renamed "Reevaluation of conformity" and included new language in sections (c)(xi)(g)(i) and (iv) addressing when a federal action has commenced and that once a conformity determination is completed by a federal agency, that determination is not required to be reevaluated if the agency has maintained a continuous program to implement the action; the determination has not lapsed; or any modification to the action does not result in an increase in emissions above the levels specified in Section 3. The additional language continues that if a conformity determination is not required for the action at the time the NEPA analysis is completed, the date of the finding of no significant impact "FONSI" for an Environmental Assessment, a record of decision "ROD" for an Environmental Impact Statement, or a categorical exclusion determination can be used as a substitute date for the conformity determination date.

X. Section 3, (c)(xi)(g)(iv) also notes that if the federal agency originally determined through the applicability analysis that a conformity determination was not necessary because the emissions for the action were below the limits in Subsection (c)(ii) of this section and changes to

the action would result in the total emissions from the action being above the limits in Subsection (c)(ii) of this section, then the federal agency must make a conformity determination.

Y. Section 3, (c)(xi)(h) “Criteria Determining Conformity of General Federal Actions” had several revisions addressing; (1) addition of “precursor” for emissions, (2) offsets coming from a nearby area of equal or higher classification provided the emissions from that area contribute to the violations, or have contributed to violations in the past, in the area with the federal action, (3) where a federal agency made a conformity determination based on a State’s commitment and the State has submitted a SIP to EPA covering the time period during which the emissions will occur or is scheduled to submit such a SIP within 18 months of the conformity determination, (4) where a federal agency made a conformity determination based on a State commitment and the State has not submitted a SIP covering the time period when the emissions will occur or is not scheduled to submit such a SIP within 18 months of the conformity determination, the State must, within 18 months, submit to EPA a revision to the existing SIP committing to include the emissions in the future SIP revision, (5) offset emissions may come from within the same nonattainment or maintenance area or from a nearby area of equal or higher classification provided the emissions from that area contribute to the violations, or have contributed to violations in the past, in the area with the federal action, (6) baseline emissions from the most current calendar year with a complete emission inventory available before an area is designated unless EPA sets another year or the emission budget in the applicable SIP, (7) the motor vehicle emissions model previously specified by EPA as the most current version may be used unless EPA announces a longer grace period in the Federal Register, (8) “Guideline on Air Quality Models” as noted in Appendix W to 40 CFR part 51, and (9) the attainment year

specified in the SIP, or if the SIP does not specify an attainment year, the latest attainment year possible under the CAA as specified in three options.

Z. Section 3, (c)(xi)(h)(i)(D) “For CO or directly emitted PM₁₀”: EPA notes that although the State updated other sections of WAQSR Chapter 8, Section 3 to address our general conformity provisions for PM_{2.5}, it inadvertently did not include the EPA revision to 40 CFR 93.158(a)(4). In our April 5, 2010 Federal Register action (see 75 FR 17254) we changed the language at 40 CFR 93.158(a)(4) for directly emitted CO and PM₁₀ to “For CO or directly emitted PM”. The reason for this change to only “PM” was to address both PM_{2.5} and PM₁₀. EPA does not view this inadvertent omission by the State as being an approvability issue. Currently, all of Wyoming is designated as “attainment/unclassifiable” for both the 1997 annual PM_{2.5} NAAQS and the 2006 24-hour PM_{2.5} NAAQS (see: 70 FR 944, January 5, 2005 and 74 FR 58688, November 13, 2009 respectively, and 40 CFR 81.351). Therefore, general conformity for PM_{2.5} does not apply in Wyoming. If in the future any area in Wyoming is designated as nonattainment for either the annual or 24-hour PM_{2.5} NAAQS, general conformity will not apply until one year after the effective date of the nonattainment designation (CAA section 176(c)(6)). Within that one year “grace period” before general conformity would apply, EPA will require Wyoming to update Chapter 8, Section 3(c)(xi)(h)(i)(D) to correctly reflect “For CO or directly emitted PM” and submit this update to EPA as a revision to the SIP.

AA. Section 3, (c)(xi)(k) “Conformity Evaluation for Federal Installations With Facility-Wide Emission Budgets” revised and added new language that included requirements and provisions addressing: (1) time periods, (2) the pollutants or precursors of the pollutants for which the area is designated nonattainment or maintenance, (3) specific quantities allowed to be emitted on an annual or seasonal basis, (4) that the emissions from the facility along with all

other emissions in the area will not exceed the emission budget for the area, (5) specific measures to ensure compliance with the budget, (6) the submittal to EPA as a SIP revision and the SIP revision must be approved by EPA, (7) that the facility-wide budget developed and adopted in accordance with paragraph (i) of this subsection, (8) that total direct and indirect emissions from federal actions in conjunction with all other emissions subject to general conformity from the facility that do not exceed the facility budget are “presumed to conform” to the SIP and do not require a conformity analysis, (9) that if the total direct and indirect emissions from the federal actions in conjunction with the other emissions subject to general conformity from the facility exceed the budget adopted the action must be evaluated for conformity, (10) that if the SIP for the area includes a category for construction emissions, the negotiated budget can exempt construction emissions from further conformity analysis, and (11) that for emissions beyond the time period covered by the SIP the federal agency can demonstrate conformity with the last emission budget in the SIP, request the State to adopt an emissions budget for the action for inclusion in the SIP.

BB. In addition to those items noted in our section IV(a)(4)(AA) above, Section 3, (c)(xi)(k) “Conformity Evaluation for Federal Installations With Facility-Wide Emission Budgets” also revised and added new language that included requirements and provisions addressing: (1) timing of offsets and mitigation measures, (2) inter-precursor mitigation measures and offsets, and (3) early emission reduction credit programs at federal facilities and installations subject to federal oversight.

b. Revisions to WAQSR Chapter 8, Section 5

Wyoming added a new section 5 to WAQSR Chapter 8 entitled “Incorporation by reference”. This new section states that all Code of Federal Regulations cited in Chapter 8,

including their Appendices, revised and published as of July 1, 2011, not including any later amendments, are incorporated by reference. The section continues with noting where copies for the applicable CFRs are available for public inspection or may be obtained, at cost, from the State.

EPA has reviewed Wyoming's revisions to WAQSR Chapter 8, Section 3 "Conformity of general federal actions to state implementation plans" and the new Section 5 "Incorporation by reference" and has concluded that our approval is warranted. Based on our review, we determined that the revisions to Section 3 incorporate and address the additional federal general conformity requirements that we promulgated in July of 2006 and April of 2010. In addition, the new Section 5 that incorporates relevant sections of the CFR is also acceptable. EPA is proposing approval of this Wyoming SIP revision in order to update the State's general conformity requirements for federal agencies, with applicable federal actions, and to align the State's general conformity requirements with the federal general conformity rule's requirements.

V. Consideration of Section 110(1) of the Clean Air Act

Section 110(1) of the CAA states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of a NAAQS or any other applicable requirement of the CAA. As described above in our section IV.a.F. of this action, the changes to the Wyoming SIP would not require a conformity determination for minor new or modified stationary sources that require a permit under the NSR permitting program (Section 110(a)(2)(C) and section 173 of the CAA). The State of Wyoming indicates that SIP permitting regulations prevent the State from issuing a permit if the facility would prevent the attainment or maintenance of any ambient air quality standard ("the proposed facility will not prevent the attainment or maintenance of any ambient air quality standard" WAQRS Chapter 6, Section 2(c)(ii)). Therefore, EPA proposes to find that

these SIP general conformity minor stationary source permit provisions are adequate to ensure that this SIP revision will not interfere with attainment, reasonable further progress, or any other applicable requirement of the CAA.

VI. Proposed Action

EPA is proposing approval of the December 21, 2012 submitted SIP revisions to Wyoming's WAQSR Chapter 8, Section 3 "Conformity of general federal actions to state implementation plans" and Section 5 "Incorporation by reference". These revisions incorporate and address the federal general conformity rule requirements that were promulgated on July 17, 2006 and April 5, 2010. EPA is proposing approval of this Wyoming SIP revision submittal in order to update the State's general conformity requirements for federal agencies, with applicable federal actions, and to align the State's general conformity requirements with the federal general conformity rule's requirements.

VII. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, and Reporting, recordkeeping requirements, Sulfur oxides, and Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: April 23, 2013.

Judith Wong,
Acting Regional Administrator,
Region 8.